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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,556	05/07/2002	David Graham Little	RICE-006	7597

24353 7590 08/29/2005

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EXAMINER

KANTAMNENI, SHOBHA

ART UNIT PAPER NUMBER

1617

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20050817

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

***Notice of Non-Responsive Amendment***

Applicant's amendment in response to the Office Action dated 08/06/2004 filed on May 14, 2004 amending all claims of the invention of Group III originally drawn to the elected methods for treating a fractured bone comprising administering to a subject a drug selected from the group consisting of at least one bisphosphonate to methods for promoting bone growth at a fracture site, the method comprising administering to a subject with a fractured bone a drug selected from the group consisting of at least one bisphosphonate and a new limitation, providing a vibratory stimulus to the fractured bone is considered non-responsive to the previous Office Action. The original Group III claims as now amended are not readable on the elected invention for the following reasons:

According to MPEP 819, the general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter.

In the instant case, Note that applicant elected Group III without traverse on Date 05/14/2004, the New limitation added is directed to Non-elected invention, all claims of the original Group III invention have been shifted by Applicant to another invention that is independent or distinct from the invention originally claimed. The invention drawn to a method for treating a fractured bone comprising administering bisphosphonate is different from a method for promoting bone growth at the fracture site comprising administering bisphosphonate, and providing a vibratory stimulus to the fractured bone. Each invention is independent from the other since, for example, the procedure for the

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treatment of fractured bone comprising administering a bisphosphonate is different from the procedure of promoting bone growth at a fracture site comprising administering bisphosphonate, and providing a vibratory stimulus to the fractured bone. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP 806.04, MPEP 808.01). The inventions herein are separate and distinct each from the other because they have different modes of operation.

The application currently contains no pending claims directed to the invention of Group III elected on 05/14/2004.

Therefore, the amendment received on 02/03/05 is considered non-responsive to the previous Office Action dated 08/06/2004.

Since the above-mentioned amendment appears to be a *bone fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shobha Kantamneni

Patent Examiner

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**SHAOJIA A. JIANG, PH.D.**  
**PRIMARY EXAMINER**